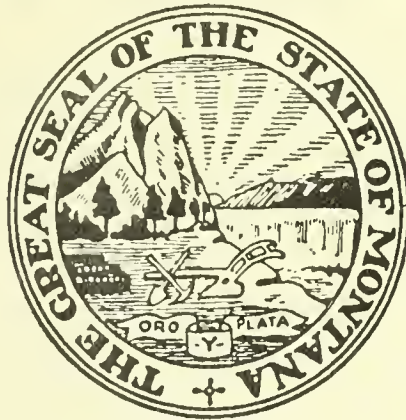


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STATE DOCUMENTS

REPORT TO
THE GOVERNOR AND LEGISLATURE
FOR
FISCAL YEAR 1976

**Prepared and Published by
Commissioner of Campaign
Finances and Practices**

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PREFACE

Contained herein is a report to the Governor, the Legislature, and the citizens of the State of Montana detailing activities of the Office of Commissioner of Campaign Finances and Practices during the preceding fiscal year. This report, covering the period from July 1975 through June 1976, is compiled and promulgated pursuant to the provisions of Section 23-5786(15), R.C.M. 1947.

Additional information and all reports submitted pursuant to Section 23-4776, et seq., R.C.M. 1947, may be obtained by contacting the Commissioner of Campaign Finances and Practices, P. O. Box 39, Capitol Station, Helena, Montana, 59601, or calling (406) 449-2942.

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The Big Sky Country

COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES

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July 1976

To the Governor, Legislature, and Citizens of the State of Montana:

As a result of perceived public pressure to impose order on the business of election campaign financing, primarily arising from irregularities surrounding the 1972 Presidential election, the Federal government and forty-eight states, including the State of Montana, passed legislation to reform and administer campaign financing and disclosure.

The Montana Campaign Practices Act¹ was combined in the Revised Codes of Montana, 1947, with the older Corrupt Practices Act.² In accordance with this Act, a bipartisan committee of the 44th Legislature, composed of the elected leadership of both the Montana House of Representatives and the Montana State Senate, appointed the Commissioner of Campaign Finances and Practices.

On July 1, 1975, the appointed Commissioner assumed the powers and duties of that office. The Office of the Commissioner, in addition to the usual administrative powers, possesses investigative and prosecutorial authority, and the power and duty to consolidate and clarify the election laws of Montana. The office is attached for administrative purposes to the Office of Secretary of State, and rules adopted by the Commissioner are promulgated in accordance with the Montana Administrative Procedure Act.

The subject of regulation of campaign financing and disclosure is a relatively new and rapidly developing area of the law. To say that some degree of confusion exists among the various state and federal agencies charged with its administration, not to mention among the participants in the political process themselves, would be grossly understating the case. As will be discussed later in this report, the Commissioner's office, in terms of staff and budget, is a relatively small operation. Certain agencies in other jurisdictions have responded to the problem with the development of bureaucracies on a scale that is orders of magnitude greater than Montana's. It by no means follows that their individual successes have been concomitantly greater.

¹Chapter 480, Laws 1975

²Initiative Act of November, 1912

The administration of these regulatory schemes by the states, including Montana, has been greatly affected by and closely tied to events occurring on the Federal level. In addition to the generalized legal guidance provided by interpretations of the Federal law, which is quite similar to Montana's, the pre-emption of state law by the Federal on certain subjects has given rise to a rather complicated interrelationship of state-federal powers.

A survey of this legal situation would scarcely be complete without mention of the guidance lately received from the Federal courts. In a 1976 decision, which might frankly be described as a landmark, the Supreme Court of the United States in Buckley v. Valeo³ invalidated a number of key provisions of the Federal Election Campaign Act. Along with them fell similar provisions in the statutes of many states. Though luckier than most, Montana did not completely escape the effect of the decision; one provision, 23-4795(3), R.C.M. 1947, which limits expenditures by a candidate from his personal funds and those of his immediate family, appears to have been rendered unenforceable. This interpretation is supported by an unofficial opinion of the Attorney General of Montana. Legislation will be suggested by the office in response to this situation.

During this initial period, the Office of the Commissioner has not been directly involved in litigation. It would be fair to say that many difficult interpretations of the law have come through the litigation efforts of other agencies better able to afford the cost. In addition, many problems which, because of the time factor, were not amenable to solution through litigation or adoption of administrative rule, have been dealt with by advisory opinions promulgated under the authority of MAC 44-3.10 (2)-P1010.

As is indicated in the budget information that follows the office has striven to educate the public about the requirements of the Campaign Practices Act. These efforts have included personal appearances by the Commissioner in various areas of the State, as well as a very substantial volume of correspondence and mailed material. Compliance with the requirements of the act has not been entirely satisfactory, but the office recognizes that a certain educational period must accompany the establishment of any new regulatory effort. We might also admit that the freewheeling business of running election campaigns is not the easiest of human affairs to regulate. At the same time, we are confident that increasing knowledge of the law will result in increased compliance in the future.

³424 U.S. 1, 46 L.Ed.2d. 659 (1976)

The stated purpose of the Campaign Practices Act is to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used to influence elections in Montana.⁴ It is the goal of the Commissioner to accomplish this in a manner which will not burden or discourage political activity, or participation in it, on the grass-roots level. This report of the office's first year of operation necessarily excludes reference to the imminent general elections of 1976, the first major test of the effectiveness of the Act and the office. Future reports, including the summaries of finance statements required by 23-4786(10), R.C.M. 1947, will afford a more accurate picture of the efficacy of the office.

⁴23-4776, R.C.M. 1947

ADMINISTRATION

Budget Data

Appropriations to the Commissioner of Campaign Finances and Practices by the 44th Legislature for the 1976 Fiscal Year totaled \$78,496.

	<u>Appropriated</u>	<u>Expended</u>
Full Time Equivalent Employees	3.0	3.05
Salaries	\$ 43,852	\$ 43,207
Employee Benefits	5,608	5,426
Contracted Services	3,000	5,313
Supplies and Materials	13,400	9,744
Communications and Transportation	2,836	2,402
Travel	550	520
Rent	-0-	-0-
Repairs and Maintenance	250	70
Other Expenses	4,000	4,002
Equipment	5,000	5,786
Total	\$ 78,496	\$ 76,470

In view of the fact that the Office of Commissioner of Campaign Practices was newly created, there existed no historical data against which the Legislature could weigh the budget demands of the office. The budget authorized by the 44th Legislature was, therefore, a projected estimate of the resources necessary to initiate and effect the statutory provisions of the Act.

Within the first half of Fiscal Year 1976, it became apparent that the authorized budget would be insufficient to accomplish the extensive mandates of the statute. Priorities were selected and established. In the limits of these priorities, the budget was administered sparingly to assure their accomplishment and to safeguard against unanticipated expenditures - often to the extent that the dictates of the statute were not adequately heeded.

The selected priorities were basically aimed at implementation of the Campaign Practices Act and education of candidates required to comply with the Act. There was no particular effort extended in areas of enforcement or verification of information filed.

Staff

Pursuant to section 23-4786(2), R.C.M. 1947, a staff was selected to implement and effect the provisions of Title 23, R.C.M. 1947. In addition to the Commissioner, the operations for Fiscal Year 1976 were handled by a total staff of 2.05 full-time equivalent employees.

Upon commencement of its operation, July 1, 1975, Karen A. Kelly, Helena, was employed as a full-time secretary, Administrative Assistant II, at an annual salary of \$9,514.

On July 15, 1975, Carol R. Mitchell, Missoula, a student at the University of Montana School of Law, was employed as an Administrative Officer II on a part-time basis. Ms. Mitchell's assignment involved the preparation of the preliminary draft of the administrative rules and regulations required by section 23-4786(14), R.C.M. 1947. Upon completion of the preliminary draft of the rules, the employment of Ms. Mitchell was terminated on September 15, 1975. Her total engagement was equal to 0.17 full-time equivalent employees and she received \$2,384 for her term of employment.

Due to the upcoming primary election and the increased interest in the affects of the Campaign Practices Act and the many legal questions surrounding its applicability, Jack J. Lowe, was hired on December 1, 1975, as a full-time lawyer, Administrative Officer II. Mr. Lowe's employment for Fiscal Year 1976, for which he was compensated a total of \$8,105, was equal to 0.58 full-time equivalent employees.

With the increase in documents being filed by candidates and political committees involved in the school district and primary elections and the need to process and review these documents, the work load became too great for the staff to handle. On March 15, 1976, Arlene M. Sparrow, Helena, was employed as a secretary, Clerk Typist III. Her employment for Fiscal Year 1976, for which she received \$1,969, was equal to 0.30 full-time equivalent employees.

Contracted Services

In light of limited staff resources, certain implementation functions of the office were contracted. The drafting of the forms and the manual prescribing the uniform system of accounts to be utilized by persons required to comply with the Act was contracted to Galusha, Higgins and Galusha, a Helena based public accounting firm. This firm prepared the preliminary and final drafts of the reporting forms and the manual at a contracted price of \$2,600. In addition, the services of the firm were contracted to assist the office with the examination of campaign finance statements filed by candidates and political committees involved in the June primary election. This engagement, in the amount of \$2,175, entailed the examination of approximately 850 statements in 190 hours.

During the formal public hearings on the proposed rules and regulations and meetings of the Advisory Council, the services of H & H Secretarial Service, a Helena firm, were contracted to prepare the verbatim transcript and minutes. For these services, H & H Secretarial was compensated a total of \$468.

PROGRAM ACCOMPLISHMENTS

Implementation

With the availability of the appropriation on July 1, 1975, the Commissioner initiated the necessary programs to implement the new Campaign Practices Act. Program priorities were established to assure implementation in time for the ensuing elections in early 1976.

The established priorities basically consisted of promulgating the necessary administrative rules and regulations as required by section 23-4786(14), R.C.M. 1947; preparing and publishing a manual prescribing a uniform system for accounts as required by section 23-4786(5); and prescribing and furnishing the forms and statements as required by section 23-4786(4). In addition to these implementing programs, the Commissioner, as required by section 23-4786(7), prescribed the manner in which the county clerks and recorders were to receive, file, collate, and maintain the reports and statements filed with them.

The rules and regulations promulgated and adopted were in the drafting process for approximately two months. Because of required notices, public hearings, and printing, the time available for promulgation was limited. In order that the rules could be effected and applicable for the ensuing election, the office employed a staff member to assist in this process.

Although the Commissioner is required by section 23-4786 (14) to promulgate rules to carry out all of the provisions of Title 23, the rules adopted dealt entirely with the implementation of sections 23-4776, et seq. It was the intent of the office, within the time available, to adequately implement the provisions of the newly enacted Campaign Practices Act. In addition, the office was opposed to the proliferation of regulations which were not absolutely necessary, since their affect on candidates and committees required to abide by them would create further confusion rather than enlightenment.

The process of drafting and publishing a manual of uniform accounts and the various report forms and statements was the second priority program addressed by the office. Once again the time available for completion was limited. To accomplish the task, the services of a professional accounting firm were retained to design an accounting system and reporting forms which would comply with the statutory requirements of the new Act. Preliminary drafting began in mid-October and the product was finalized and made available to the printer in less than six weeks.

Election Related Performance

The bulk of the efforts of the office in the first half of FY 1976 were concentrated in the area of implementation of the Act. Shortly after the beginning of 1976, the focus of the office was turned to the area of assisting candidates and political committees in their efforts to comply with the campaign finance disclosure provisions of the statutes. The elections requiring close attention were the school district trustee elections and the primary state wide and state district elections.

During the period encompassing these elections, the office dealt with approximately 1,600 candidates and 48 political committees supporting these individual candidates. These candidates filed for the more than 750 public office positions which were to be filled by election and generated nearly 3,800 individual statements and reports. In addition to the public office elections, there were approximately 600 ballot issue elections to decide various school district issues. Of these, the office was only able to supervise about 30 of the political committees organized to support or oppose the ballot questions.

The operations of the office relative to these elections provide an improved situation upon which to perceive the resources necessary to meet the mandates of the Campaign Practices Act. Once again, the primary resources of the office were utilized to educate and assist those required to comply with the Act. Although no particular effort was made to investigate or verify information filed, all reports and statements were reviewed. The great majority of reports and statements filed required corrections because of inaccuracy, incompleteness, or lack of clarity. It was, however, the policy of the office to take a liberal view of such technical violations in the primary election, since it represented the candidates' and committees' first contact with the new Act. It was our feeling that such failures to comply were in most cases the result of misunderstanding rather than criminal intent. To date, these problems have been handled by several methods - telephone calls to gather additional required information, letters, and, in some cases, refusal to accept a report as filed. However, with the "shakedown" primary election over, the policy of the office in these matters must and will change. We cannot ignore the statutory mandates placed upon this office; and the paperwork burden generated by repeated attempts at securing voluntary compliance entails a drain on the limited resources of the office and an undue cost to the taxpayers.

Public Involvement

Shortly after the initial organization of the office, a need was felt to encourage public involvement in the administration and decision-making processes of the office. It was felt that participation by individuals who had been a part of the Governor's Ad Hoc committee which drafted the original bill would be helpful in assisting the office in adhering to the Legislature's intent. Accordingly, individuals from those groups and organizations which had been active in the drafting and passage of Senate Bill 76 (the Campaign Practices Act) were contacted to serve as an advisory group to the Commissioner. In addition, representatives from groups or agencies which would have a hand in enforcing the law and representatives of political groups which would be subject to and operating under the law were included.

While the advisory committee has no specific legal status or authority, the advice and suggestions of such a broad-based group has been invaluable to the office. The committee has met to consider and approve proposed rules, advisory opinions, form design, publications, budget, and the general administration of the office. In turn, the committee serves to notify its related groups and the public of actions taken by the office.

Current members of the Advisory Committee, and their affiliations, are:

Mrs. Nancy Aagenes (Helena)
Montana Women's Political Caucus

Mrs. Tressia Anderson (Helena)
Montana League of Women Voters

Mr. John Bell (Helena)
Montana Conservative Caucus

Mr. John Campbell (Helena)
Montana School Business Officials' Assn.

Mrs. Natalie Cannon (Helena)
Common Cause of Montana

Senator Frank Dunkle (Helena)
Republican Legislators

Mr. Jim Hopkins (Helena)
Montana American Party

Mr. Dan Mizner (Helena)
Mont. Municipal Clerks, Treasurers & Finance Officers Assn.

Advisory Committee, continued

Representative Helen O'Connell (Great Falls)
Democratic Legislators

Mr. Michael Pichette (Helena)
Montana Democratic Party

Mr. Clark Pyfer (Helena)
Montana Republican Party

Mr. Ernest Post (Helena)
Montana AFL-CIO (COPE)

Mr. Carl Stucky (Bozeman)
Montana County Clerks and Recorders Assn.

Mr. Donald E. White (Bozeman)
Montana County Attorneys' Assn.

Mr. Tom Winsor (Helena)
Montana Chamber of Commerce

The committee has met on a more-or-less monthly basis since its formation. While at first glance it might seem that such a broad-based group would find it difficult to reach a consensus of opinion, the opposite has been true. The input received from such a variegated spectrum of legal and political opinions has given the office insights into its own operation, an affect that we could not have otherwise obtained. It is clear that consultation with the advisory committee has enabled us to avoid many problems which the office might have otherwise encountered, and its formation must be counted as one of the major successes of the office to date. We hope that this fortunate state of affairs will continue to prevail.

As indicated earlier, a substantial effort was aimed at education of candidates, political committees, and the public in general. In addition to the public advisory committee meetings, a total of 21 public seminars were conducted in 15 cities through-out the state. By means of these meetings, it is estimated that the office made contact with some 1,200 people. The primary emphasis of these meetings was to inform individuals of their responsibilities under the Act and to provide them with the necessary instruction consequent to their compliance with it.

In conjunction with the various public gatherings, the news media provided valuable assistance in informing the public on various aspects of the new campaign laws. It is apparent that the news media has and will continue to play a very significant role in the overall effectiveness of the office and the Campaign Practices Act.

CONCLUSIONS

The legislation enacted by the 1975 Legislature provides extensive reform in the area of regulation of campaign finances and practices for all elections in Montana. The goals of that legislation are aimed at encouraging citizen trust and participation in the election process by requiring disclosure of the source and disposition of funds used in campaigns and by providing effective enforcement.

Disclosure of political income and its disbursement is widely recognized as a basic requirement in eliminating campaign abuses. Full, timely disclosure is the keystone of regulation of money and its influence in politics.

Essential to such disclosure, however, is accountability. To effect accountability and, in turn, disclosure, the Campaign Practices Act incorporates the doctrine of "agency" in its requirement that candidates and political committees appoint campaign treasurers who are responsible for the receipt and disbursement of all campaign moneys. Adjunct to this doctrine, the Act requires the establishment of separate campaign bank accounts for the purpose of depositing and expending all funds utilized in campaigns. In this way, accountability is centralized and a tight accounting of money, through established accounts and records, is made possible from the time it is received until it is spent.

To provide timely disclosure, reports revealing the source and disposition of campaign funds are required on a periodic basis before and after elections. The content of reports is open to scrutiny so that the general public can know who supports a candidate or issue and to what extent. Thus, the central goal of the regulatory law is accomplished by establishing accountability and making timely details on the source and disposition of campaign resources available to the public. Citizen participation and confidence in the election process is encouraged by promoting an atmosphere in which there is ready availability of complete, fair, and truthful information. In the final analysis, it is left to the voter to decide his priority; and he has the information upon which to base a decision.

A law, however, that attempts to regulate but is unenforceable is worse than no law at all. The Legislature, in its wisdom, was aware that the knowledge of widespread violation breeds cynicism in the electorate and among candidates. Past history and common sense dictate that no law can achieve effective campaign regulation unless it establishes adequate impartial enforcement. Cognizant of this fact, the Legislature created a genuine enforcement mechanism.

By the passage of the Campaign Practices Act and the creation of the Office of Commissioner of Campaign Finances and Practices to implement and enforce the Act, the Legislature established the foundation upon which its desire to restore public confidence and participation in the election process could be fulfilled. It is upon this foundation and to this same end that this office has proceeded in its implementation and enforcement of the new Act.

Education, information, and enforcement are the key words that describe the policy adopted by the Commissioner to implement and enhance compliance with the Act. Education and information were emphasized as the cornerstone of establishing an effective disclosure process. Recognizing the difficulties of implementing a law requiring registration and reporting by large numbers of people, and operating on the premise that people have nothing to fear from full disclosure, the office decided that the initial stage in securing compliance was to educate and assist individuals rather than publicly condemn or refer them for prosecution.

Without appearing to be too self-serving, we would like to advance the conclusion that the office has been generally successful in its efforts to implement and administer the new Act. Under no circumstances, however, could this have been accomplished without the continued support and assistance of legislators, the press, citizens groups, and the people of the state of Montana who assist in the administration and enforcement and those who are governed by the Act. These persons provided the resources necessary to supplement our limited available resources.

As has been pointed out, there exists an urgent need for additional resources. Attention must be given to the many statutory mandates which could not be satisfied. Included in these mandates is the need to better monitor reports, to enforce reporting requirements, to disseminate information on file, and to investigate complaints and alleged violations. Also of great concern, is the need to review and make desirable changes in the office's administration of the Act, and the need to review and propose recommendations to the Legislature on desirable amendments.

Although the true resource demands necessary to meet these mandates are not wholly ascertainable at this time, we are confident that following the general election there will be adequate data available to sufficiently project the needs for the '78-'79 Biennium. If the intended purpose of the Campaign Practices Act of 1975 are to be effected, it is important that these needs be determined and that they be submitted to the 45th Legislature for its consideration.

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